

PTO/PCT Rec'd 18 OCT 1999

IN THE U.S. PATENT AND TRADEMARK OFFICE

Appn. Number: 09/214,406
Filing Date: December 28, 1998
Applicants: John J. Malcolm/Thomas Shalvarjian
Appn. Title: Combined Event Calendar and Picture Frame
Examiner: GAU:

Mailed October 7, 1999
at Sunnyvale, CA

**PETITION TO REVIVE AN UNAVOIDABLY ABANDONED PATENT
APPLICATION UNDER 37 C.F.R. 1.137(a)**

RECEIVED

Commissioner of Patents and Trademarks
Washington, District of Columbia 20231

24 JAN 2000

Sir:

Legal Staff International Division

Applicant hereby petitions under 37 C.F.R. 1.137(a) to revive the above-identified patent application which was unavoidably abandoned.

Applicant complied with M.P.E.P. §1893.01(b)(1) entitled "Submissions Required by 30 Months From the Priority Date" which outlines the requirement for beginning the national phase. This section of the M.P.E.P. reads as follows:

"To begin entry into the national stage, where election of the U.S. under Chapter II of the PCT has been made prior to 19 months from the priority date, applicant is required to comply with 37 CFR 1.495(b) within 30 months from the priority date. Thus, applicant must pay the basic national fee on or before 30 months from the priority date and be sure that a copy of the international application has been received by the U.S. Designated Office prior to expiration of 30 months from the penalty date. The notice referred to in PCT Rule 47.1(c) constitutes conclusive evidence of transmission of the international application. Payment of the basic national fee will indicate applicant's intention to enter the national stage and will provide a U.S. correspondence address in most instances.

Facsimile transmission is not acceptable for submission of the basic national fee and/or the copy of the international application. See 37 CFR 1.6(d). Likewise, the certificate of mailing procedures of 37 CFR 1.8 do not apply to the filing of the copy of the international application and payment of the basic national fee. See 37 CFR 1.8(a)(2)(i)(F).

Applicants cannot pay the basic national fee with a surcharge after the 30 months deadline. Failure to pay the basic national fee within 30

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months from the priority date will result in abandonment of the application. The time for payment of the basic fee is not extendable.

Similarly, the copy of the international application is required to be provided within 30 months from the priority date. A copy of the international application is provided to the U.S. Designated Office by the International Bureau (the copy is ordinarily received shortly after publication at about 18 months from the priority date). The International Bureau also mails a confirmation (Form IB/308) to applicant upon which applicant can rely that the copy has been provided. See PCT Rule 47.1(c). The copy is placed in a file to await applicant's submission of the basic national fee and other national stage requirements."

On December 28, 1998, applicant submitted by Express Mail under 37 CFR 1.10 a package containing a copy of the International Application and a check for \$398 for the basic filing fee and excess claims fees, thereby assuring that the necessary materials were timely filed. Also enclosed were unsigned copies of a "Combined Declaration And Power Of Attorney" and a "Small Entity Declaration - Independent Inventors" listing the residence and correspondence addresses.

M.P.E.P. §1893.01(b)(1) continues to state:

"If the basic national fee has been paid by expiration of 30 months from the priority date but the required oath, declaration, or translation has not been filed within 30 months from the priority date, as appropriate, the Office will send applicant a notice and provide a period of time to supply the deficiency as set forth in 37 CFR 1.495(c). The time period usually set is 1 month from the date of the notification by the Office or 31 months from the priority date, whichever is later. This period may be extended pursuant to the provisions of 37 CFR 1.136(a). Thus, payment of the basic national fee on or before 30 months from the priority date will (1) cause the Office, after a check of the national stage papers at 30 months, to mail a notice identifying any deficiencies and affording applicant a period for correction of those deficiencies, and (2) as in national practice under 37 CFR 1.53, enable applicants to extend the period of time under 37 CFR 1.136(a) for submission of a proper oath, declaration, or translation. The international application enters the national stage under 35 U.S.C. 371 when the last of the items indicated in 35 U.S.C. 371(c) and 37 CFR 1.491 is timely received by the office."

Based on the informal notification of the serial number on the Return Receipt Postcard, applicant had prepared and signed declarations for the application (copies enclosed) on February 23 and 24, 1999. Applicant then awaited formal notification in the form of the notice indicated in the M.P.E.P. §1893.01(b)(1) to verify the serial number and file a response containing the two declarations to complete all of the

requirements for national stage filing. Furthermore, applicant assumed, based on the indication in M.P.E.P. §1893.01(b)(1) of a similar procedure to "national practice under 37 CFR 1.53" that submission of the declarations should be accompanied by a copy of the "Notice to File Missing Parts" as indicated in 37 CFR 1.53(d) and as indicated at the bottom of the "Notice to File Missing Parts" (FORM PTO-1533) which states "A copy of this notice MUST be returned with the reply." To date no Notice has been received, therefore the documents have awaited receipt of a notification for proper filing with the application.

The remaining portion of M.P.E.P. §1893.01(b)(1) reads:

"An international application becomes abandoned if the copy of the international application or the basic national fee has not been received by the U.S. Designated Office prior to expiration of 30 months from the priority date. A notification of any missing requirements pursuant to 37 CFR 1.495 will only be mailed in those instances where the applicant has paid the basic national fee within 30 months from the priority date.

The notice of missing requirements lists several items which 37 CFR 1.497(a) and (b) require and all of those items will have to be satisfied before the oath or declaration is considered accepted. Similarly, the translation must be a translation of the international application. A translation of less than all of the international application (e.g., untranslated words in the drawings or translations of those untranslated words in a different part of the document) or a translation that includes modifications, e.g., the insertion of headings, is unacceptable. "Sequence Listing" need not be translated if the "Sequence Listing" complies with PCT Rule 12.1(d) and the description complies with PCT Rule 5.2(b). See Interim rule 37 CFR 1.495(c)."

Applicant relied on the information given in M.P.E.P. §1893.01(b)(1), complied with all of the requirements as understood and made a *bona fide* attempt to assure that all matters pertaining to the case were timely and properly handled. Therefore, Applicant submits that above-indicated application should not be abandoned and requests that the holding of abandonment for the above-indicated patent application be withdrawn and that the application be forwarded for examination.

A check for \$55 for the petition fee under 37 CFR 1.17(l) is enclosed herewith.

Very respectfully,



Carol D. Titus
505 W. Olive Ave., Suite 330
Sunnyvale, CA 94086

Registration Number: 38,436
phone (408) 732-7737
fax (408) 732-7876

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Mailed October 7, 1999
at Sunnyvale, CA

TRANSMITTAL LETTER

Commissioner of Patents and Trademarks
Washington, District of Columbia 20231

Sir:

Please file the following papers related to the above identified patent application:

- Petition to Revive and Unavoidably Abandoned Patent Application (3 pages)
- Copy of Declaration with John Malcolm's signature (2 pages)
- Copy of Declaration with Thomas Shalvarjian's signature (2 pages)
- Copy of Small Entity Declaration with John Malcolm's signature
- Copy of Small Entity Declaration with Thomas Shalvarjian's signature
- Check # 1818 for \$55 petition fee
- Return receipt postcard

RECEIVED

OCT 14 1999

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

Registration Number: 38,436
phone (408) 732-7737
fax (408) 732-7876

Very respectfully,
Carol D. Titus
Carol D. Titus
505 W. Olive Ave., Suite 330
Sunnyvale, CA 94086

CERTIFICATE OF MAILING

I hereby certify that this document addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231 will be deposited with the U.S. Postal Service as first class mail with sufficient postage at Sunnyvale, CA on October 7, 1999.

(Post Office)

(Date)

Signature

Carol D. Titus